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No. 87-262

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

IN THE MATTER OF

JOHN J. STANTON,

PETITIONER.

BRIEF OF THE COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether procedural due process requires that motions challenging the legal sufficiency of disciplinary charges against an attorney be ruled upon at any particular time in the course of the disciplinary proceedings other than simply before any discipline is imposed?

2. Whether a state court's disciplining of an attorney for his persistent practice of disregarding his clients' wishes either by neglect or by interfering in matters as fundamental as the client's decision to plead guilty constitutes a sufficient basis for the imposition of reciprocal discipline by a federal court?

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STATEMENT OF THE CASE

Noticeably absent from petitioner John J. Stanton's ("petitioner") request that this Court review the United States District Court for the District of Columbia's decision to impose reciprocal attorney discipline upon him is any detailed discussion of the facts that led

to the decision to discipline him in the first instance. We begin our statement of the case with a recitation of those critical facts, and then turn to the disciplinary proceedings based upon them.

1. The Facts Underlying The Disciplining Of Petitioner

The problems petitioner now seeks to have this Court review all arise out of his representation of four clients in criminal matters: Mr. Faison, Mr. Johnson, Ms. Benjamin and Mr. Wilson. We quote verbatim below, except as otherwise indicated, the pertinent discussion of each of these representations from the reported opinions of the District of Columbia Court of Appeals in In re Stanton, 470 A.2d 272 (D.C. App. 1983) and In re Stanton, 470 A.2d 281 (D.C. App. 1983). See 470 A.2d at 273-274, 274, 283-284 & 289-290, respectively. These critical opinions, which literally

underlie this entire case, are conspicuously absent from petitioner' s appendix to his petition for a writ of certiorari.

A. Mr. Faison's Case

In June 1981, Mr. Faison was arrested on a felony charge. At this time there were already two misdemeanor charges pending against Faison, and shortly thereafter another misdemeanor bail-jumping charge was lodged against him for failure to appear at a hearing in one of the misdemeanor cases. [Petitioner] was appointed as Faison's counsel in the felony case and in the misdemeanor bail-jumping case on June 13, 1981. On that day bond was set at $3,000 for both the felony and misdemeanor bail-jumping charges. A $5,000 bond had been set previously in each of the two pending misdemeanor cases. During the week of June 13, Faison twice requested

[petitioner] to file a bond review motion and in the ensuing three weeks made efforts to discuss his case with [petitioner]. [Petitioner] did not file such a motion and did not discuss the case with Faison.

At the urging of Faison's girlfriend, [petitioner] made an unsuccessful attempt to reach Faison by telephone at the jail in late June. On June 25 Mr. Verrone, Faison's counsel in one of the misdemeanor cases, filed a bond review motion in which, among other things, he gave an explanation for Faison's failure to appear at the May 12 hearing which resulted in his bail-jumping charge. This motion was granted on July 1, and the bond was reduced to $2,500. 1/

1/ In September this bond was consolidated with the bond in Faison's other misdemeanor case, which was also reduced to $2,500.

On July 6, 1981, [petitioner] conferred with Mr. Verrone about the status of the case that he was handling and the possibility of a plea bargain covering all three of the misdemeanor cases. This conversation and the attempted phone call to Faison at the jail were the only things done by [petitioner] on behalf of Faison after the preliminary hearing in the felony case on June 19, 1981, until July 7, 1981.

On July 7 when Faison was in court for a status call in his misdemeanor cases, he talked to [petitioner] and asked him to speak to the U.S. Attorney's office about a plea bargain in the felony case. [Petitioner] did so at that time, but the Assistant U.S. Attorney was not prepared to make a plea agreement. When Faison and [petitioner] met in the cellblock on July 7, Faison informed [petitioner] that he had filed a complaint the previous day

with Bar Counsel concerning [petitioner's] failure to render assistance to him.

On July 14, 1981, Bar Counsel informed [petitioner] by letter that he was in an adversary relationship with his client and should seek permission to withdraw. On July 18 [petitioner] rejected Bar Counsel's request that he seek permission to withdraw.

Faison was arraigned on an indictment returned in the felony case on July 29; [petitioner] was absent due to illness and another attorney represented Faison. The felony case was continued to August 27 for a status hearing. In the meantime Faison had filed pro se motions for bond review and for discovery.

There was no communication between Faison and [petitioner] after July 7, except for a meeting in the courthouse cellblock on July 24 when Faison was there for a status conference on his misdemeanor

cases. [Petitioner] did nothing on Faison's behalf after July 7.

Sometime prior to the August 27 status hearing, the court removed [petitioner] and appointed new counsel for Faison.

[On the basis of the foregoing facts, Bar Counsel brought charges against petitioner of] "neglecting a legal matter entrusted to him [DR 6-101(A)(3)] and intentional failure to seek a client's lawful objectives [DR 7-101(A)(1)]." 470 A.2d at 273.

B. Mr. Johnson's Case

Mr. Johnson was arrested on October 2, 1980, on a warrant charging petty larceny. As a result of a search conducted at the time of the petty larceny arrest, he was also charged with violation of the Dangerous Drug Act. On that same day [petitioner] was appointed to represent Johnson in both of these cases.

At a preliminary hearing on the drug case on October 30, 1980, the prosecutor offered to drop one of the two charges against Johnson if he would enter a guilty plea to the other. On [petitioner's] advice, the offer was declined. Both cases were assigned to Judge Hess who set the petty larceny case for trial on May 28 and the drug case for trial on June 4, 1981.

[Petitioner] was not present when the larceny case was called for trial on May 28 because of his attendance in another courtroom. Based on mistaken information as to the reason for [petitioner's] absence, Judge Hess removed [petitioner] from the larceny case and appointed attorney Jankovich to represent Johnson in the larceny case which was continued.

The drug case came on for trial on June 4, 1981. After the jury had been impanelled, Johnson sought to enter a plea

of guilty. During Johnson's attempt to plead guilty, [petitioner] limited himself to urging Johnson to tell the court what it was that Johnson wanted. Other than responding to the court's inquiry concerning how much investigation [petitioner] had performed, [petitioner] said nothing to the court in aid of Johnson's attempted plea and, so far as the record shows, said nothing to Johnson except to urge Johnson to tell the court what was on his mind.

The judge declined to accept Johnson's plea on account of Johnson's apparent confusion, and the case went to trial, which resulted in Johnson's being found guilty. At the conclusion of the trial, Judge Hess removed [petitioner] as counsel for Johnson and, on June 24, 1981, vacated the jury verdict.

Johnson was committed to jail at the conclusion of the trial. Later, Johnson

did plead guilty in the larceny case, and the drug case was dropped. Johnson was then sentenced to sixty days with credit being given for the time already served. Since the time Johnson had served by then exceeded sixty days, Johnson was released at the time of his sentencing.

[Based on the foregoing, Bar Counsel charged petitioner with] "neglecting a legal matter entrusted to him [DR 6-101(A)(3)], intentional failure to seek a client's lawful objectives [DR 7-101(A)(1)] [and] conduct prejudicial to the administration of justice [DR 1-102(A)(5)]." 470 A.2d at 273.

C. Ms. Benjamin's Criminal Cases

Ms. Benjamin had two criminal cases pending against her in the Superior Court at the same time. The first, which [was] labeled the "underwear case," was based on a charge of attempted larceny of assorted underclothing from Hecht's department

store. [Petitioner] was appointed to represent Ms. Benjamin in the underwear case.

The second case, which [was] labeled the "crabmeat case," was also a charge of attempted larceny. Ms. Benjamin was represented by other counsel, particularly Mr. Bright, in the crabmeat case.

It was uncontested in the record before the Hearing Committee that at the time of Ms. Benjamin's arraignment on the underwear case, her bond was set at $1,000 with a 10% payment. Not having the requisite $100 to secure her release, Ms. Benjamin was incarcerated. It is also uncontested that Ms. Benjamin sent [petitioner] a letter requesting him to file a bond review motion for her. Her request was unequivocal.

[Petitioner] did not answer Ms. Benjamin's written request. A few days later Ms. Benjamin telephoned [petitioner]

from the District of Columbia Jail and renewed her request to him to file a bond review motion.

[Petitioner] admits that after the letter and the telephone conversation outlined above, he did not prepare or file a bond review motion or make any other effort to obtain Ms. Benjamin's release from the District of Columbia Jail by helping her to secure the necessary $100. Consequent to [petitioner's] inactivity, Ms. Benjamin remained in the District of Columbia Jail for seventeen days until her son, who had been out of town, returned to Washington and posted the requisite $100.

After Ms. Benjamin's release, [petitioner] received a plea offer from the United States Attorney. Her two sets of lawyers disagreed about the advisability of her accepting the government's plea offer. The lawyers

representing Ms. Benjamin on the crabmeat case concluded that acceptance of the government's plea offer was in the best interests of Ms. Benjamin. [Petitioner], on the other hand, concluded that the plea offer was not in Ms. Benjamin's best interests and he so recommended to her.

[Petitioner] concedes that he had an adequate opportunity to urge his views upon Ms. Benjamin and that she was competent to make the decision whether to plead guilty. After consideration of the competing advice of her two sets of lawyers, Ms. Benjamin concluded that she wished to accept the government's plea offer. Accordingly, Ms. Benjamin's other lawyers arranged for a hearing before Judge Neilson on October 15, 1979, at which time Ms. Benjamin was to plead guilty in both the underwear and the crabmeat cases and to be sentenced.

At the hearing, [petitioner]

volunteered to the Court that he had advised Ms. Benjamin that the plea arrangement was "improvident and unwise" and [petitioner] asked Judge Neilson to take this fact into account in the Rule 11 proceeding that he was then conducting on Ms. Benjamin's attempts to plead guilty. Ms. Benjamin's plea was accepted over [petitioner's] objection, and she was sentenced.

As [a result of these facts], Bar Counsel brought a petition alleging three areas of misconduct: (1) in connection with the [petitioner's] failure or refusal to file a bond review motion, Bar Counsel charged him with neglect and with intentionally failing to seek the lawful objectives of his client; (2) in connection with [petitioner's] failure or refusal to assist Ms. Benjamin in accepting the government's plea bargain, Bar Counsel charged violations of the same

two Disciplinary Rules; and (3) Bar Counsel charged [petitioner] with failure to conduct meaningful communication and to provide assistance to his client amounting to a violation of the Disciplinary Rule prohibiting neglect.

D. Mr. Wilson's Criminal Case

[Petitioner's] client, Mitchell Wilson, and another man were arrested on June 8, 1980, and charged with assault with intent to commit robbery. [Petitioner] was originally assigned to represent Wilson, but, when Wilson was found to be ineligible for legal assistance under the Criminal Justice Act, [petitioner] was retained for the flat fee of $1000 -- $200 to be paid immediately, and $800 to be paid at the rate of $100 per month if Wilson was indicted. Wilson told [petitioner] that he had been identified as having assaulted the complaining witness in an alley about 3:45

a.m. He admitted being in the area, but denied knowing anything about the incident.

At a preliminary hearing held on June 19, 1980, [petitioner] learned that the complaining witness had told the arresting officer that he had torn the shirt of his assailant, and that, when arrested, Wilson was found to have a torn shirt stuffed in his pocket. Wilson told [petitioner] that his shirt had been torn earlier when he had played basketball with a friend, David Williams. Wilson gave [petitioner] Williams' address, but not his telephone number. Because of that fact, [petitioner] concluded that Wilson had no real interest in calling Williams, and that Williams was not a genuine witness.

[Petitioner] therefore made no attempt to contact Williams. 2/

The government offered to accept, before indictment, a plea of guilty to attempted robbery with the government not opposing Federal Youth Act Probation. Mitchell refused to plead guilty, asserting his innocence. On July 8, [petitioner] sent a letter to Judge Ugast stating that, if his client could be assured of a sentence under the Youth Act, he would recommend that the client plead guilty. That letter was not answered. [Petitioner] at that time had made no investigation of the case beyond talking

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2/ Wilson also named two other persons, friends of his co-defendant, who, he said, could testify that he had been drinking at a bar near the place that the assault occurred. [Petitioner] concluded that even if the witnesses could be found, their testimony would not be helpful, and he therefore made no attempt to identify or interview them.

with his client and hearing the testimony of the officers at the preliminary hearing.

Wilson and his co-defendant were indicted and were arraigned on October 14, 1980. On November 13, [petitioner] testified, he had a half-hour telephone conversation with the Assistant United States Attorney in charge of the case. On November 17, after a status hearing, [petitioner] had a conference with his client, the co-defendant, and the co-defendant's attorney. [Petitioner] testified that, by that time, he had concluded that his client had been involved in the incident. He so informed his client. His advice was that the defendants not take the stand, but that he would try to "knock down" the governments' case. [Petitioner] testified that he intended to interview the complaining witness, but had not done so by January

16, 1981, although the trial was set for January 19, 1981.

On January 16, 1981, [petitioner] learned that Wilson had hired another attorney. He called Wilson and berated him, using offensive language. On January 19, 1981, the date originally set for trial, the case was postponed. [Petitioner] sought out Wilson's mother and berated her for Wilson's change of attorneys. The mother felt so harassed by [petitioner's] conduct that she complained to Bar Counsel, instituting the investigation which eventually led to the instant charges [of failing to obtain discovery, failing to keep his client informed of the progress of the case and failing to investigate the case.]

2. Disciplinary Proceedings Against Petitioner In The District Of Columbia Court Of Appeals

As provided in the rules established by the District of Columbia Court of Appeals, the specified charges of misconduct by petitioner based on the foregoing facts were first reviewed and then raised against him by Bar Counsel to the District of Columbia Bar. Bar Counsel prosecuted these charges against petitioner before a disciplinary Hearing Committee, which developed a full evidentiary record of the facts surrounding the charges and heard argument from the parties concerning the consequences of those facts. In Mr. Faison's case, "the Hearing Committee found a violation of DR 6-101(A)(3) and DR 7-101(A)(1)." 470 A.2d at 273. On the record in Mr. Johnson's case, the Hearing Committee discerned "a violation of only DR 6-101(A)(3)." Id. With respect to Ms.

Benjamin's cases, the Hearing Committee found, "on the bond review matter," that petitioner "had 'intentionally fail[ed] to seek the lawful objectives of his client through reasonably available means permitted by law' in violation of DR 7-101(A)(1)," 470 A.2d at 282-283, but concluded "that Bar Counsel had failed to make out a violation of DR 7-101(A)(1) . . . in connection with [petitioner's] failure to assist his client in entering her plea of guilty." Id. at 283. Concerning Mr. Wilson's case, the Hearing Committee concluded "that 'there is clear evidence that [petitioner] neglected his client's legal matter. Despite the client's repeated assertions of innocence, [petitioner] concluded that his client was guilty, and failed to investigate the case, as charged.'" Id. at 289.

As further provided in the local rules, the findings of the Hearing

Committee were forwarded to the Board on Professional Responsibility of the District of Columbia Court of Appeals ("the Board") for it to review and report on to the Court. Upon reviewing the record in petitioner's cases, the Board agreed with the Hearing Committee's findings on all matters, except those concerning the plea offer matters involving Mr. Johnson and Ms. Benjamin. See id. at 287-289. In both of those instances, the Board concluded, contrary to the Hearing Committee, that petitioner had in fact "violated the disciplinary rules when he intentionally failed to pursue his client's lawful objective[s]," 470 A.2d at 289; see id. at 273, and that he also erred in Ms. Benjamin's case by "interject[ing] his personal views in a forum where they had no place." Id. at 289. The Board also considered and rejected a number of legal arguments

raised by petitioner challenging the conduct of the disciplinary proceedings against him, see id. at 284-286, including his assertion that "the petition should have been dismissed [as defective] on its face" before any hearing was held on it. Id. at 284. On the basis of its conclusions, the Board recommended that petitioner be suspended from the practice of law for a period of a year and a day because of his misconduct in representing Mr. Faison and Mr. Johnson, see 470 A.2d at 281, and for a period of sixty days as a result of his misconduct in representing Ms. Benjamin and Mr. Wilson. See id. at 291-292.

Upon receipt of the Board's reports, the District of Columbia Court of Appeals, which has the final say on all matters of attorney discipline in the local courts, adopted the Board's findings and recommendations in all respects. Id. at

272 & 282. In an act of leniency toward petitioner, however, the Court ordered the sixty-day suspension "to be served concurrently with [the] suspension of a year and a day." Id. (emphasis added).

3. Disciplinary Proceedings Against Petitioner In The United States District Court

At the time that the above-described discipline was imposed on petitioner, he was also a member of the bar of the United States District Court for the District of Columbia, and the disciplinary orders issued by the District of Columbia Court of Appeals triggered a reciprocal disciplinary proceeding in that district court under its then-Local Rule 4-3(II). See Petitioner's Appendix ("Pet. App.") at 4a. This triggering led the district court to issue an order to petitioner to show cause why such reciprocal discipline should not be imposed on him. Id. Petitioner responded by arguing "that the

procedure in [his District of Columbia Court of Appeals disciplinary proceeding] deprived him of due process, that the asserted proof of misconduct does not support the conclusion of the disciplining court, and that grave injustice would result from acceptance of that conclusion as final by imposition of reciprocal discipline in this case." Pet. App. at 4a-5a.

The Committee on Grievances of the district court thoroughly reviewed petitioner's response to the Order To Show Cause, together with the above-described reported opinions by the District of Columbia's Court of Appeals concerning petitioner's misconduct, and came to "the view that reciprocal discipline should be imposed under Rule 4-3(II)(d) of the Rules of [the] Court." Pet. App. at 5a. The Committee also specifically rejected petitioner's defensive claims as follows:

> [R]espondent's memorandum fails to demonstrate that his proffered conclusions 'clearly appear' 'upon the face' of this disciplinary proceeding record as required by Rule 4-3(II)(d) of this court's Rules. The committee finds the opinions of the District of Columbia Court of Appeals to be particularly persuasive and effective in disposing of respondent's claims. In short, the record in this case simply will not support any demonstration, or any finding by this court, of such clearly apparent deficiencies in the disciplining of respondent. To the contrary, the record clearly supports the action taken against respondent.

Pet. App. at 5a-6a.

On November 15, 1985, following the recommendation of the Committee on Grievances, the district court suspended petitioner "from the practice of law in the district court for a period of a year and a day, effective nunc pro tunc as of June 22, 1984," Pet. App. at 7a, and "further ordered that the suspension shall remain in effect until further order of the [District of Columbia Court of Appeals] terminating his suspension." Id.

In so ruling, the district court expressly found "that none of the defenses raised by the respondent herein has merit sufficient to bar the imposition of reciprocal discipline and that none of the defenses provided by Rule 4-3(II)(d) of this court appears on the face of the record herein." Pet. App. at 8a.

4. Post-Disciplinary Proceedings

Unsatisfied with the results of either of the above-described disciplinary proceedings against him, petitioner, sought -- as was his right -- to appeal them both. First, he asked this Court to review, by certiorari, the decisions of the District of Columbia Court of Appeals finding him guilty of misconduct and imposing discipline on him in the first instance. See Stanton v. District of Columbia Court of Appeals, No. 83-1511. This Court refused to review those decisions by the District of Columbia

Court of Appeals, however, denying petitioner's petition for a writ of certiorari on May 14, 1984. See 466 U.S. 972.

Second, petitioner appealed the district court's decision to impose reciprocal discipline upon him to the United States Court of Appeals for the District of Columbia Circuit. See Pet. App. at 8a. Petitioner was so confident of the merits of this appeal that he asked the court of appeals to summarily reverse the district court's order of reciprocal discipline. Id. at 8a-9a. Instead, finding the appeal so completely lacking in merit, the court of appeals did exactly the opposite and summarily affirmed the district court. See Pet. App. at 9a. 3/

3/ In the District of Columbia Circuit, such summary affirmance is utilized only when the merits of the appeal are "so (Cont'd)

Petitioner followed this loss at the court of appeals with the instant petition to this Court.

REASONS FOR DENYING THE WRIT

The petitioner in this case asks this Court to review the imposition of discipline upon him because of his misconduct as an attorney. The decision to discipline petitioner has already been through four different levels of administrative procedure -- Bar Counsel, a Hearing Committee, the Board of Professional Responsibility and the Committee on Grievances -- and four different levels of judicial procedure --

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clear, plenary briefing, oral argument, and the traditional collegiality of the decisional process would not affect [the court's] decision." Sills v. Bureau of Prisons, 761 F.2d 792, 793-94 (D.C. Cir. 1985).

the District of Columbia Court of Appeals, this Court, the United States District for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. At every level and in every forum, petitioner's defensive claims, like those at issue here, have been thoroughly and completely rejected. There is no need for this Court to part company with this unanimous line of precedent and waste its resources any further on this matter. The issues raised by petitioner lack any merit whatsoever, and his case is of no national importance.

I. Procedural Due Process Requires Only That Petitioner's Legal Challenges To The Disciplinary Proceedings Against Him Be Resolved Before Discipline Is Imposed, Not Necessarily At Any Earlier Point In The Proceedings

The first issue raised by petitioner is purely a procedural one. He complains that he was deprived of due process when his legal challenges to the validity of

the disciplinary proceedings against him were not resolved until after the fact-finding hearing on the allegations against him. Significantly, petitioner does not argue on this petition that his legal challenges were never ruled upon or that the rulings on those challenges were in error. Instead, he simply alleges a process-oriented defect in the timing of those rulings, which allegedly rises to constitutional proportions.

There is no substance at all to this contention by petitioner. The Due Process Clause protects individuals against being "deprived of life, liberty, or property, without due process of law." U.S. CONST., AMENDS. V & XIV. Axiomatically, under this provision, due process concerns are not transgressed until there has been a deprivation. [4/] In the instant case, it is clear from the record of the proceedings that petitioner's legal

challenges to the validity of the proceedings against him were in fact ruled upon in the course of the administrative proceedings before any discipline was actually imposed on him. See 470 A.2d at 284-285. Because they were so ruled upon at that time, petitioner has had the opportunity to be heard "at a meaningful time and in a meaningful manner" that the Due Process Clause grants him. Armstrong v. Manzo, 380 U.S. 545, 552 (1965).

Underlying petitioner's argument on this point is his inherent distrust of "after-the-fact" legal rulings on the validity of a proceeding that has already

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4/ Indeed, this Court has on occasion gone even further than this plain language of the clause and held that, in some circumstances, due process concerns are not even violated as long as post-deprivation judicial process is available. See, e.g., Paratt v. Taylor, 451 U.S. 527 (1981).

taken place. Petitioner cites In re Ruffalo, 390 U.S. 544 (1968), as support for this suspicion, but in fact Ruffalo proves precisely the opposite. In Ruffalo, this Court held that an attorney could not be disciplined on a charge of misconduct revealed by the evidence at a factual hearing when the attorney had not been given notice of the possibility of that charge before the hearing. Id. at 550-552. Thus, even though the complained-of fact-finding hearing had already taken place, this Court had no difficulty properly ruling on the validity of Ruffalo's legal challenge to the validity of the charge against him. In fact, such "after-the-fact" rulings happen all the time in the federal courts. See, e.g., Fed. R. Crim Proc. 29(c) & 33; Fed. R. Civ. Proc. 59 & 60; 28 U.S.C. §§ 2254 & 2255. As long as the legal challenge is given full and fair consideration at some

point in the proceedings, [5] the timing of that consideration presents no occasion for constitutional concern.

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[5] There is no basis in this record for questioning the fullness or the fairness of the eventual consideration given to such legal challenges in District of Columbia disciplinary proceedings. To the contrary, as the Board of Professional Responsibility noted in this case:

> [it] would have no hesitation in recommending dismissal of a case in which the respondent was not fairly notified of the charges against him because the petition was so inadequate as not to allow him to know with what he was charged, that determination is made at the Board level so that any possible objection to the petition can be considered together with the factual record in the case.

470 A.2d at 285. The policy underlying the local procedure in this regard is not to short shrift claimed legal defenses, but rather to expedite the whole hearing process because of the substantial and undeniable public interest involved in its speedy resolution. See id. at 284-285.

II. The District Of Columbia Court Of Appeals' Factually Supported Findings That Petitioner Persistently Disregarded His Clients' Wishes In Violation Of His Ethical Obligations As An Attorney Are A Sufficient Basis For The Imposition Of Reciprocal Discipline

Petitioner complains that his disciplining by the District of Columbia Court of Appeals provides an insufficient factual basis for the imposition of reciprocal discipline by the United States District Court for the District of Columbia. We believe the facts of petitioner's misconduct, as evidenced in the opinions of the Court of Appeals reproduced in our statement of the case, speak eloquently for themselves on this point and we will not address them further herein, but merely refer the Court to them. See pp. 3-19, supra. Suffice it to say, however, that the record in this case certainly does not present "such an infirmity of proof as to facts found to have established the want of fair private

and professional character as to give rise to a clear conviction on [this Court's] part that [it] could not consistently with [its] duty accept as final the conclusion on that subject." Selling v. Radford, 243 U.S. 46, 51 (1917).

Petitioner attempts to characterize the disciplinary findings against him as merely a wholesale abdication of the control of professional conduct to whatever the attorney's clients "see" as appropriate tasks for the lawyer to perform for them. Petition at 13. Neither petitioner's failures to investigate cases that he had been assigned, nor petitioner's failures to assist his clients in pleading guilty, nor petitioner's failures to file critical -- and demonstrably nonfrivolous -- motions when requested to do so by his clients or to communicate with them at all concerning his failure to do so, can be laid at the

feet of idiosyncratic clients attempting to overburden him with unreasonable work demands, as petitioner would like. The fact of the matter, and the simple truth emanating from the record of these proceedings, is that petitioner's preferred course of conduct in representing criminal clients in the Superior Court was simply to do nothing. His fundamental obligations to do more were not foisted upon him by the whimsical wishes of demanding clients, but were placed upon him instead by the rules of conduct developed to ensure the integrity of his profession. Petitioner willfully and repeatedly violated those rules, and he has no just cause to complain about being brought to task for it as a result.

Finally, as petitioner himself appears to concede, whatever peculiarities may exist, and we submit there are none, in the District of Columbia Court of

Appeals' interpretation of local attorneys' professional obligations to their clientele is purely a matter of "D.C. law." Petition at 13. As this Court has noted, "[t]hat court is the ultimate body wielding the State's power over the practice of law." Bates v. State Bar of Arizona, 433 U.S. 350, 360 (1977). There is no need for this Court to get embroiled in such fact-bound determinations of purely local concern.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: October 9, 1987

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a member in good standing of the Bar of this Court and that I caused three copies of the foregoing Brief Of The Committee On Grievances Of The United States District Court For The District Of Columbia In Opposition To The Petition For A Writ Of Certiorari to be sent by first-class mail, postage prepaid, this 13th day of October, 1987 to:

John J. Stanton
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Herbert J. Miller Jr (sic)
HERBERT J. MILLER, JR.